

One year on from the introduction of fees to access the Employment Tribunal:

Summary of results from a survey of employment cases brought to Citizens Advice bureaux



Word cloud showing relative frequency of reasons given by advisers as to why their clients were unlikely to pursue an employment tribunal claim: Citizens Advice survey of employment advisers June/July 2014

July 2014

1. Summary

1.1 In June and July this year, Citizens Advice undertook a six week survey to enable Citizens Advice Bureaux employment advisers to provide information on the clients they were seeing with a potential cause of action to the Employment Tribunal. As well as providing details of the case, advisers were asked to assess, where possible, the strength of the claim; the likelihood of the client pursuing the claim, and the reasons for their assessment. This briefing summarises the main findings of the survey.

1.2 Key findings were:

- 80 per cent of cases were assessed by an adviser as having a Very good, Good or 50/50 chance of success if they were pursued to employment tribunal.
- Less than a third of claims assessed as having a Very good, Good or 50/50 chance of success were considered likely to be, or were definitely being, taken forward.
- For claims less than £1,000 in value, less than a quarter were assessed as likely to be, or were definitely being, taken forward.
- Where cases were assessed as unlikely to be taken forward, fees or cost were the most common reasons given by the adviser, in over half of cases.
- The most common bases of claim were unfair dismissal and withholding of wages. Holiday pay was the next most common basis of claim.
- One fifth of cases contained discrimination as a basis for the claim.
- 40 per cent of clients were potentially eligible for fee remission.
- 43 per cent were not in employment at the time of their contact with the bureau adviser. 25 per cent were claiming a social security benefit as a direct result of the alleged complaint against the employer.

2. Background

2.1 On 29 July 2013, fees were introduced to access the Employment Tribunal. There are two fee brackets. To issue a less complex claim, such as withholding of wages or holiday pay, the fee is £160. For more complex claims such as unfair dismissal or discrimination, the issue fee is £250. In both cases, additional fees are payable to pursue the case to a hearing. These are £230 and £950 respectively, meaning that taking a case through the Employment Tribunal can cost up to £1,200.

2.2 There is a system of fee remission in place whereby those on low income can have fees fully or partially paid. It requires detailed proof of eligibility.

2.3 Since fees were introduced, Ministry of Justice statistics show that the number of claims being issued in the Employment Tribunal has plummeted. Latest statistics¹ for the six months from October 2013 to March 2014 show a 73 per cent drop on the same period the previous year.

¹ Tribunal statistics: January to March 2014 tables – Ministry of Justice 12 June 2014

3. The survey

3.1 The survey was completed by 72 advisers across the UK, advising clients on employment issues. They provided details of 182 clients they have seen with potential claims to the Employment Tribunal since the advent of fees in July 2013. This represents a sample of all cases brought to bureaux. Citizens Advice Bureaux dealt with over 25,000 issues relating to employment tribunals and employment tribunal appeals in 2013/14. They dealt with nearly 400,000 issues relating to employment generally, including matters relating to terms and conditions, and pay and entitlements. Over 15,000 issues related to discrimination in employment.

4. Strength of claim

4.1 Advisers were asked to rate the strength of the client's claim, on the basis of the information available, if they were to take the case to employment tribunal.

Fig.1 shows the breakdown by number of cases. Fig.2 shows the same information by percentage.

Key finding – 80 per cent of cases were assessed by an adviser as having a Very good, Good or 50/50 chance of success if pursued to employment tribunal.

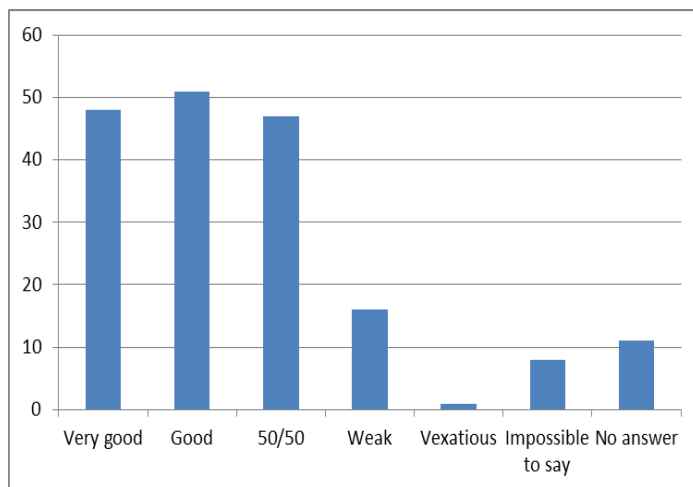


Fig.1: Adviser rating of strength of claim by number of cases

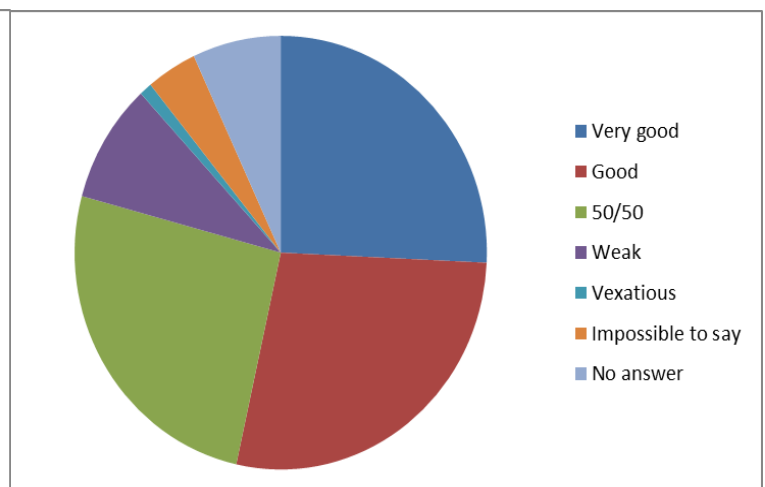


Fig. 2: Adviser rating of strength of claim by percentage share

4.2 Advisers were also asked to indicate the likelihood of the client pursuing the claim. Table 1 shows their assessment of likelihood compared with assessment of strength of claim.

Key finding – Less than a third of claims with a Very good, Good or 50/50 chance of success were considered likely to be, or were definitely being, taken forward. Only 14 per cent were definitely being taken forward.

Strength of claim	Definite	Likely/Very likely	Unlikely/Very unlikely	Not at all likely	Impossible to assess	No answer
Very good	10	6	12	13	2	5
Good	6	14	9	9	9	4
50/50	4	5	19	6	8	5
Weak	2	1	6	3	4	0
Vexatious	0	0	0	1	0	0
Impossible to assess	2	0	4	1	1	0
No answer	3	1	2	2	0	3

Table 1: Comparison of strength of claim by likelihood of client pursuing claim by number of cases

4.3 This shows that of the 146 cases assessed as having a Very good, Good or 50/50 chance of success, 45 (31 per cent) are considered by advisers as likely to be, or definitely being, taken forward. Of those only 20 cases (14 per cent) are definitely being taken forward.

5. Value of claim

5.1 In cases where the client was seeking a financial remedy, advisers were asked to assess roughly the value of the claim. 78 cases (43 per cent) were assessed as having a value of less than £3,000. 52 cases (29 per cent) were assessed as having a value of more than £3,000. The adviser did not provide an assessment in the remaining 52 cases. Table 2 shows the assessment of value of claim compared with the adviser's assessment of whether a client is likely to pursue a claim.

Key findings: For claims less than £1,000 in value, only 10 out of 45 cases (less than a quarter) were assessed as likely to be, or definitely being, taken forward. In 6 out of those 10 cases, the client was eligible for fee remission – 2 other cases were uncertain and 2 were not eligible. Of the 45 cases less than £1,000 in value, only 7 did not involve withholding of wages or holiday pay.

Only 3 of the 45 cases less than £1,000 in value were assessed as weak. 18 cases were assessed as having a very good chance of success but only one was definitely being taken forward. 14 were considered unlikely to be taken forward and no answer was given for the remaining three.

5.2 The number of cases in individual value categories is small, so it is difficult to draw firm conclusions. However, we can see that the likelihood of taking a higher value claim forward is greater than that of a lower value claim. 21 out of 78 cases (27 per cent) with a value of less than £3,000 were assessed as likely to be, or definitely being, taken forward as opposed to 20 out of 52 cases (38 per cent) with a value of £3,000 or more.

Value of claim	Definite	Likely / Very likely	Unlikely / Very unlikely	Not at all likely	Impossible to assess	No answer given	Total
<£500	0	4	10	11	0	3	28
£500-£999	3	3	4	4	2	1	17
£1000-£1999	7	4	6	7	6	3	33
£3000-£4999	2	2	5	4	1	1	15
£5000-£9999	6	5	3	1	3	2	20
£10000-£17999	6	1	3	3	1	1	15
£18000-£30000	0	0	0	0	2	0	2
Impossible to assess	2	7	11	2	6	3	31
No answer given	1	0	11	3	3	3	21

Table 2: Comparison of value of claim by likelihood of client pursuing claim by number of cases

6. Basis of claim

6.1 Advisers were asked to identify the basis on which a client could bring a case before the Employment Tribunal. One case can contain more than one basis of claim. Fig.3 shows the basis of claim by number of cases.

Key findings: The most common bases of claim were unfair dismissal and withholding of wages. Holiday pay was the next most common basis of claim. One fifth of cases contained discrimination as a basis of claim.

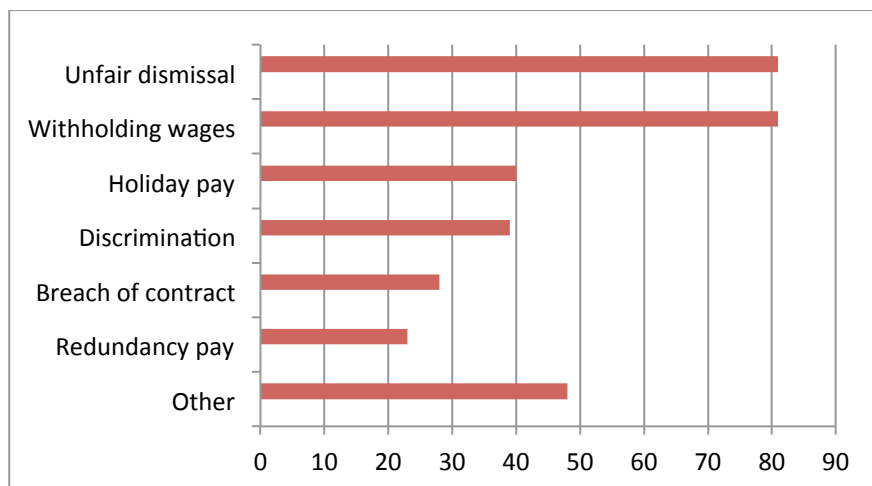


Fig.3: Basis of claim by number of cases

7. Employment status

7.1 Fig. 4 shows the client's employment status at the time of contact with the bureau adviser by percentage share.

Key findings: 43 per cent of clients were not in employment at the time of their contact with the bureau adviser. 25 per cent were claiming a social security benefit as a direct result of the alleged complaint against the employer.

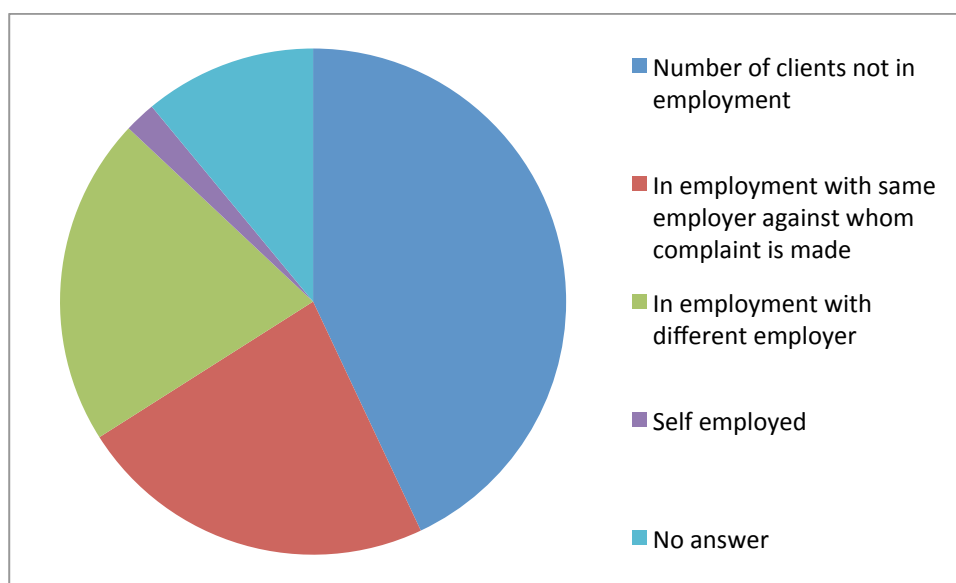


Fig. 4: Employment status of client at time of contact with bureau by percentage share

8. Fees and fee remission

8.1 Advisers were asked to provide reasons for their assessment of the likelihood of a client taking a claim forward. This was a free text question, and where advisers provided a response, there were several different reasons put forward either instead of, or alongside, the cost of taking a claim. However, fees or costs were the most dominant reasons put forward by advisers, and were cited in over half of the 68 claims which were assessed as having a Very good, Good or 50/50 chance of success but were unlikely to proceed. This is most certainly an underestimate of the impact of fees. In many cases, advisers did not provide a response or were not able to ascertain their client's reasons. In addition, the survey asked for an assessment of likelihood at a single point in time. It is not possible, for example, to determine from it whether clients who decided to pay the fee to issue a claim would continue if they were subsequently required to pay a hearing fee. Nor is it possible to tell whether those with fee remission applications pending, would continue with their claim if their application were rejected.

8.2 Advisers were asked about the proportion of their clients potentially eligible for fee remission. 72 clients (40 per cent) were assessed as potentially eligible and 87 clients (48 per cent) as ineligible. No answer to this question was given in the remaining 23 cases. Potential eligibility does not mean that the client would have been granted fee remission. Several advisers, both as part of and outside of the survey, have reported considerable difficulties with satisfying fee remission application requirements, with claims being rejected on grounds of evidence not being provided even though it had been, on grounds of very small unexplained items on bank statements, on grounds of evidence letters - for example proving benefit entitlement - not being within one month or being photocopies. Changes to the fee remission system were brought in at the end of June this year, but it is too soon to say whether this will have a major impact on the problems applicants have experienced.

9. About Citizens Advice

9.1 The Citizens Advice service is a network of 319 independent member Citizens Advice Bureaux that provide free, impartial advice from more than 3,300 locations in England and Wales, including GPs' surgeries, hospitals, community centres, county courts and magistrates courts, and mobile services. The service aims:

- to provide the advice people need for the problems they face
- to improve the policies and practices that affect people's lives.

In 2013/14 the Citizens Advice service in England and Wales advised 2 million people on 5.5 million problems.

9.2 By helping people to solve problems, we change lives, which in turn represents considerable value for communities, the public purse and society as a whole. Research by Citizens Advice demonstrates that the Citizens Advice service is worth at least £750 million to society².

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² *Making the case – The value to society of the Citizens Advice service*: Citizens Advice May 2014

